



## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

June 16, 2006

### **H.R. 5318** **Cyber-Security Enhancement and** **Consumer Data Protection Act of 2006**

*As ordered reported by the House Committee on the Judiciary on May 25, 2006*

#### **SUMMARY**

H.R. 5318 would broaden the coverage of current laws and establish new federal crimes for improper use of personal electronic records and other criminal activity involving computers. The bill also would authorize the appropriation of \$30 million for each of fiscal years 2007 through 2011 for the United States Secret Service, the Federal Bureau of Investigation, and the Criminal Division of the Department of Justice to investigate and prosecute violators of the bill's provisions.

Assuming appropriation of the authorized amounts, CBO estimates that implementing the bill would cost \$144 million over the 2007-2011 period. H.R. 5318 could affect direct spending and revenues, but we estimate that any such effects would be less than \$500,000 annually.

H.R. 5318 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates that the costs to state, local, and tribal governments would be small and would not exceed the annual threshold established in UMRA (\$64 million in 2006, adjusted annually for inflation).

H.R. 5318 also would impose private-sector mandates as defined in UMRA. The bill would require certain persons to notify federal law enforcement in the event of a major security breach of certain electronic data. The bill also would prohibit anyone from bringing a cause of action in court against certain persons related to a delay of notification of such a security breach for law enforcement purposes. CBO expects that the cost of complying with the notification mandate would be small. However, because of a lack of information about such cases, CBO cannot estimate the direct cost of complying with the mandate prohibiting lawsuits or whether the aggregate cost of mandates in the bill would exceed the annual threshold established by UMRA for private-sector mandates (\$128 million in 2006, adjusted annually for inflation).

## ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 5318 is shown in the following table. For this estimate, CBO assumes that the bill will be enacted by the beginning of fiscal year 2007, that the amounts authorized by the bill will be appropriated by the start of each fiscal year, and that outlays will follow the historical rate of spending for these activities. The costs of this legislation fall within budget function 750 (administration of justice).

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	By Fiscal Year, in Millions of Dollars				
	2007	2008	2009	2010	2011
<b>CHANGES IN SPENDING SUBJECT TO APPROPRIATION</b>					
Authorization Level	30	30	30	30	30
Estimated Outlays	24	30	30	30	30

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In addition to the costs shown in the table, enacting H.R. 5318 could increase collections of civil and criminal fines for violations of the bill's provisions. CBO estimates that any additional collections would not be significant because of the relatively small number of additional cases likely to be affected. Civil fines are recorded as revenues. Criminal fines are recorded as revenues, deposited in the Crime Victims Fund, and subsequently spent without further appropriation.

## ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

H.R. 5318 contains intergovernmental mandates as defined in UMRA because it would require state and local governments to notify federal law enforcement agencies in the event of a security breach involving the personal information of 10,000 or more individuals. Based on information from state and local governments, CBO does not expect such notification requirements to be costly. The bill also would preempt certain state laws that address identity theft. CBO estimates that the cost to state and local governments would be small and well below the threshold established in UMRA (\$64 million in 2006, adjusted annually for inflation).

## **ESTIMATED IMPACT ON THE PRIVATE SECTOR**

H.R. 5318 would impose private-sector mandates as defined in UMRA. The bill would require certain persons to notify federal law enforcement in the event of a major security breach of certain electronic data. The bill also would prohibit anyone from bringing a cause of action in court against certain persons related to a delay of notification of such a security breach for law enforcement purposes. CBO expects that the cost of complying with the notification mandate would be small. However, because of a lack of information about such cases, CBO cannot estimate the direct cost of complying with the mandate prohibiting lawsuits or whether the aggregate cost of the mandates in the bill would exceed the annual threshold established by UMRA for private-sector mandates (\$128 million in 2006, adjusted annually for inflation).

### **Security Breach Notification**

H.R. 5318 would impose a mandate on certain persons regarding notification of a major security breach. The bill would require anyone who owns or possesses data in an electronic form maintained by that person, having knowledge of a major security breach of that data involving personal identification of 10,000 or more individuals, to notify the United States Secret Service or the Federal Bureau of Investigation before notice of such breach is made to consumers and within 14 days of discovery of the breach. Such persons also would have to delay notifying consumers, if so directed by federal law enforcement. Based on information from government sources, CBO expects that the direct cost of complying with the mandate would be small.

### **Immunity From Lawsuit**

H.R. 5318 also would impose a mandate by prohibiting any cause of action in any court against a person who notifies law enforcement of a security breach pursuant to this bill for any penalty, prohibition, or damages relating to the delay of notification for law enforcement purposes. Because the bill would eliminate existing rights to seek compensation for damages caused by certain acts, it would impose a private-sector mandate. The direct cost of the mandate would be the forgone net value of awards and settlements in such claims. Because of the lack of information about both the value of awards in such cases and the number of claims that would be filed in the absence of this legislation, CBO has no basis for predicting the level of potential damage awards, if any. Thus, CBO cannot estimate the cost of this mandate.

## PREVIOUS CBO ESTIMATES

CBO has provided cost estimates for seven other pieces of legislation that deal with identity theft or the safeguarding of personal information. Some have different provisions and would require private companies and the government to take certain precautions to safeguard personal information. The cost estimates reflect those differences.

- On May 26, 2006, CBO transmitted a cost estimate for H.R. 3997, the Data Accountability and Trust Act, as ordered reported by the House Committee on Energy and Commerce on May 24, 2006.
- On May 26, 2006, CBO transmitted a cost estimate for H.R. 4127, the Financial Data Protection Act of 2006, as ordered reported by the House Committee on Financial Services on May 24, 2006.
- On April 19, 2006, CBO transmitted a cost estimate for S. 1789, the Personal Data Privacy and Security Act of 2005, as reported by the Senate Committee on the Judiciary on November 17, 2005.
- On April 6, 2006, CBO transmitted a cost estimate for H.R. 4127, the Data Accountability and Trust Act, as ordered reported by the House Committee on Energy and Commerce on March 29, 2006, with a subsequent amendment provided by the committee on April 4, 2006.
- On March 30, 2006, CBO transmitted a cost estimate for H.R. 3997, the Financial Data Protection Act, as ordered reported by the House Committee on Financial Services on March 16, 2006.
- On March 10, 2006, CBO transmitted a cost estimate for S. 1326, the Notification of Risk to Personal Data Act, as ordered reported by the Senate Committee on the Judiciary on October 20, 2005.
- On November 3, 2005, CBO transmitted a cost estimate for S. 1408, the Identity Theft Protection Act, as ordered reported by the Senate Committee on Commerce, Science, and Transportation on July 28, 2005.

All of the bills would require certain entities to take precautions to safeguard the personal information of consumers, all would preempt state and local laws, and all contain intergovernmental mandates as defined in UMRA. The Senate bills would impose costs that exceed the annual threshold defined in UMRA (\$64 million in 2006, adjusted annually for inflation) in at least one of the first five years that the mandates are in effect because those

bills would require a large number of intergovernmental entities to make changes that could be costly.

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